

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

Mary Saucedo, et al.

v.

Civil No. 17-cv-183-LM

William Gardner, Secretary of State  
of the State of New Hampshire,  
in his official capacity, et al.

**NOTICE OF RULING**

Currently pending before the court are the parties' cross-motions for summary judgment, as well as plaintiffs' motion to strike. A hearing on the motions is scheduled for July 16, 2018. The parties' briefing on these motions, along with the evidence they have submitted, give rise to a number of issues that the parties have not fully explored in their briefs. Therefore, in addition to the issues discussed in their memoranda, the parties should be prepared to address the following at the hearing:

1. In their amended complaint, plaintiffs appear to request that the court wholly strike down the signature-match requirement of RSA 659:50, III. By contrast, in their motion for summary judgment, plaintiffs request only that the court compel defendants to provide notice and an opportunity to cure before rejecting a ballot on the basis of RSA 659:50, III.

a. What relief do plaintiffs request?

- b. To what extent does the analysis of plaintiffs' claims change depending on the nature of their requested relief?
  - c. To what extent, if any, does plaintiffs' acknowledgment—that they “do not challenge the state's requirement that voters sign their absentee ballot application and ballot envelope affidavit,” doc. no. 62 at 26—bear on the analysis of their claims?
- 2. Plaintiffs request that the court require defendants to provide voters notice and an opportunity to cure before rejecting a ballot on the basis of RSA 659:50, III. However, defendants indicate that moderators, who enforce the requirement at the polls, are not employees of the Department of State.
  - a. To what extent does moderators' absence from this suit bear on the ability of the court to give effectual relief to plaintiffs?
- 3. The parties focus on the issue of whether pre-deprivation notice and an opportunity to cure is necessary in order for RSA 659:50, III to satisfy the requirements of procedural due process. But there is evidence in the record regarding defendants' efforts to provide post-deprivation notice to voters whose votes have been rejected under RSA 659:50, III. See doc. no. [49-1](#).
  - a. Does the current procedure for providing post-deprivation notice of rejection comply with the demands of procedural due process? If not, what additional procedures could be imposed to cure the constitutional infirmity? The parties should be prepared to address these questions under the test set forth in Mathews v. Eldridge, 424 U.S. 319 (1976).
- 4. Defendants have filed a number of affidavits from local election officials in order to “provide a snapshot of how cities and towns actually implement RSA 659:50.” Doc. no. [54](#) at 8. These affidavits show that moderators consider extrinsic evidence in

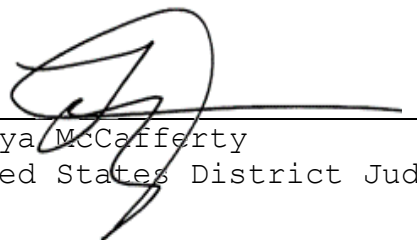
applying 659:50, III. Defendants appear to suggest that the practices described in the affidavits are consistent with the practices of moderators statewide.

- a. Does RSA 659:50, III permit moderators to consider extrinsic evidence in deciding whether the signature on the absentee-ballot affidavit "appears to be" executed by the same person who signed the application?
  - b. If RSA 659:50, III permits each local moderator to consider extrinsic evidence when evaluating two signatures, does such practice pass constitutional muster under the tests applicable to plaintiffs' constitutional claims, particularly [Bush v. Gore](#), 531 U.S. 98 (2000)?
  - c. If RSA 659:50, III does not permit moderators to consider extrinsic evidence, how does the statewide practice of considering extrinsic evidence bear on plaintiffs' constitutional claims?
5. The parties appear to agree that plaintiffs are bringing facial challenges to RSA 659:50, III. Even so, the parties proffer evidence relating to the statute's application in recent elections.
  - a. To what extent may the court consider such evidence on a facial challenge?
6. Plaintiffs challenge defendants' assertion that their claim under the Americans with Disabilities Act is moot by virtue of recent amendments to RSA 659:50, III. In her deposition, plaintiff Mary Saucedo indicated that her husband will "[d]efinitely" assist her in completing her absentee ballot in the future. Doc. no. [49-5](#) at 7. Under the new version of RSA 659:50, III, a person who receives assistance in casting an absentee ballot due to blindness or disability is exempt from the signature-match requirement.
  - a. In light of the exemption to RSA 659:50, III, is the ADA claim moot? If not, what evidence demonstrates that the claim is not moot?

7. RSA 659:50, III seeks to ensure that the same person executes both the absentee-ballot application and absentee-ballot affidavit. The statute would thus appear to prevent a person from obtaining and casting another's absentee ballot.

- a. Is there evidence in the record to show that this specific kind of voter fraud exists, either in New Hampshire or in any other state?
- b. Are there any alternative procedures that would allow moderators to ensure that the same person executes both documents, without requiring that they engage in handwriting analysis (e.g., assigning each absentee voter a confidential PIN number)?

SO ORDERED.



Landya McCafferty  
United States District Judge

July 11, 2018

cc: Counsel of Record